SUPREME COURT OF THE UNITED STATES.

No. 422.

THOMAS SALMON, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF MASSACHUSETTS.

IN ERROR TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

INDEX.

	Original.	Print.
Writ of error	1	1
Petition	2	2
Exceptions	3	3
Demurrer	4	3
Special plea	5	4
Indictment	7	5
Plea	10	6

1 UNITED STATES OF AMERICA, *ss:*

[L. S.] The President of the United States to the honorable the judges of the superior court of the Commonwealth of Massachusetts, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between the Commonwealth of Massachusetts, plaintiff, and Thomas Salmon, of Woburn, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or authority exercised under, said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Thomas Salmon, as by his complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-five.

JOHN G. STETSON,
Clerk pro tem. of the Circuit Court of the United States, Mass. Dist.

Writ issued July 21st, 1866.

Allowed by NATHAN CLIFFORD,
Associate Jus. Sup. urt of the U. S.

I, A. F. L. Norris, make oath and say, that on the twenty-seventh of July, A. D. 1866, I filed a true and attested copy of the within writ, attested by the clerk of the circuit court within named, in the clerk's office of the superior court within and for the county of Middlesex and Commonwealth of Massachusetts.

A. F. L. NORRIS.

SUFFOLK, *ss:*

Oct. 19, 1866, subscribed and sworn to before me,

E. A. WADLEIGH,
Justice of the Peace.

MIDDLESEX, *ss:*

OFFICE OF THE CLERK OF COURTS FOR SAID COUNTY,
July 30, 1866.

I hereby certify that a copy of the within writ of error was filed in this office on the twenty-seventh day of July, 1866.

JNO. JAS. SAWYER,
Ass't Clerk.

2 UNITED STATES OF AMERICA,
CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts, ss:

To the honorable the circuit court of the United States:

Your petitioner, Thomas Salmon, of Woburn, in the county of Middlesex, in the district of Massachusetts, shows unto your honors that heretofore, to wit, on the fourth Monday of June, A. D. 1866, at Concord, in the said county of Middlesex, in said district of Massachusetts, upon an indictment in which the Commonwealth of Massachusetts was plaintiff, and your petitioner was defendant, final judgment was rendered against your petitioner in the superior court within and for the county of Middlesex, in said district, being the highest court of law or equity of the said State in which a decision could be had in said suit, as appears by the records of said superior court hereto annexed and made part of this petition. And your petitioner says that in the trial of said case there was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; and wherein was drawn in question the validity of a statute of, and authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, and laws of the United States, and the decision was in favor of such their validity; and wherein was drawn in question the construction of a clause of the Constitution, and of a treaty, and statute of, and commission held under, the United States, and the decision was against the title, right, privilege, and exemption specially set up and claimed under such clause of said Constitution, treaty, statute, and commission, and a manifest error hath happened to the great damage of your petitioner.

Wherefore your petitioner prays that a writ of error to the Supreme Court of the United States may issue in due form of law, and he will ever pray, &c.

THOMAS SALMON.
By his attorneys, N. RICHARDSON,
A. F. L. NORRIS.

3 *Defendant's exceptions.*

Superior court, criminal session.

MIDDLESEX, *ss:*

COMMONWEALTH OF MASSACHUSETTS
vs.
THOMAS SALMON. } June term, 1866.

This was an indictment against the defendant under the 86th chapter of the general statutes, and together with the subsequent pleadings, may be referred to, and is made a part of these exceptions.

The court sustained the demurrer, and overruled the defendant's special plea in bar. And thereupon, the plea of not guilty being entered, the jury found the defendant guilty; when the defendant, after verdict against him, and before sentence, filed in the case a motion in arrest of judgment, which may be referred to, and is made a part of these exceptions.

The court overruled the defendant's motion in arrest of judgment and the defendant excepted to the foregoing opinions, rulings, directions, and judgments of the court, and prays that his exceptions may be allowed.

THOMAS SALMON.
By his attorney, A. RICHARDSON.
A. F. L. NORIS.

The above being found conformable to the truth, is allowed.
MARCUS MORTON,
Judge of Supreme Court.

4 Filed July 18, 1866.

Demurrer to plea in bar.

Superior court for the transaction of criminal business. June term, 1866.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex, ss:*

COMMONWEALTH, by indictment,
vs.
THOMAS SALMON. } No.

And now comes Isaac S. Morse, as he is district attorney for the northern district, and says that the Commonwealth aforesaid ought not to be barred from having and maintaining the said indictment against the said Salmon, defendant, as aforesaid, by reason of anything in the plea of said defendant alleged; because he says that the said plea and the matters therein contained are not sufficient in law to bar the Commonwealth from further prosecuting the said indictment against the said defendant. And the said district attorney, among other causes of demurrer, assigns the following, to wit: That said plea is

double, argumentative, and otherwise informal and insufficient; all of which the said district attorney is ready to verify. Wherefore, for want of sufficient plea in this behalf, the said district attorney prays for judgment for the Commonwealth, and that the said
5 defendant may plead over to the said indictment.

I. S. MORSE, *District Attorney.*

And the defendant joins in demurrer.
By his attorney. N. RICHARDSON.

Filed July 13, 1866, and sustained.

6 Superior court, criminal session, June term, 1866.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex, ss:*

COMMONWEALTH OF MASSACHUSETTS
vs.
THOMAS SALMON.

And the defendant comes and defends the wrong and injury when, &c., where, &c., and says that the said Commonwealth ought to be barred from having and maintaining their said indictment in this case because he says that he had at the time and times mentioned in said indictment, and at all other times, he had full, complete and perfect authority and license from the United States of America to do all the acts complained of in said indictment, which license was granted him under and by virtue of an act of Congress, and for which he paid, according to the laws of the United States, into the treasury of the United States the full sum of twenty-five dollars, and that he has actually paid in money a tariff or revenue duty and tax upon the same spirituous and intoxicating liquors to the government of the United States, for the keeping and selling of which he is complained of in said indictment, which duty, tariff, or tax was paid upon the said spirituous or intoxicating liquors in the same packages and in the same form and quantity in which he sold the same, as charged in said indictment, and in no other form, or package, or quantity, and that he has done no other act, or sold any other spirituous or intoxicating liquors than such as he has paid a duty or tax upon to the government of the United States, as aforesaid, all of which he is ready to verify.

And for further plea in this behalf the said defendant says that the Commonwealth ought to be barred from having and maintaining their said indictment in this case, because he says that by the Constitution of the United States, and also by the constitution of this Commonwealth, it is provided that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted —and, that the acts of the legislature, upon which the indictment is founded, imposes fine and punishment for an act which is not wrong in itself, and which fine and punishment is excessive, cruel, and unusual, and the said act of the legislature is unconstitutional and void, all of which he is ready to verify.

Wherefore he prays that the said Commonwealth from having and

maintaining their said indictment in this case may be barred, and that he may have judgment, and be hence discharged, &c.

By his attorney,

N. RICHARDSON.
A. F. L. NORRIS.

Filed July 13, 1866.

7 COMMONWEALTH OF MASSACHUSETTS, *Middlesex, to wit*:

At the superior court, begun and holden at Concord, within and for the county of Middlesex, on the fourth Monday of June, in the year of our Lord one thousand eight hundred and sixty-six, the jurors for the Commonwealth of Massachusetts, on their oath, present that Thomas Salmon, late resident of Woburn, in the county of Middlesex and Commonwealth aforesaid, at said Woburn, on the first day of December, in the year of our Lord one thousand eight hundred and sixty-five, and at said Woburn from said last-mentioned day to the day of finding this indictment, without then and there having any license, appointment, or authority therefor, first duly had and obtained according to law, was then and there a common seller of intoxicating liquors, against the peace of said Commonwealth and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, on their oath aforesaid, do further present that Thomas Salmon, of Woburn, in the county of Middlesex and Commonwealth aforesaid, on the first day of February, in the year of our Lord one thousand eight hundred and sixty-six, at said Woburn, without then and there having any license, appointment, or authority therefor, first duly had and obtained according to law, did then and there sell to a certain person, whose name is William Westcott, a certain quantity of intoxicating liquor, to wit, one gill of intoxicating liquor, against the peace of said Commonwealth and contrary to the form of the Statute in such case made and provided.

8 And the jurors aforesaid, on their oath aforesaid, do further present that Thomas Salmon, of Woburn, in the county of Middlesex aforesaid, on the first day of March, in the year of our Lord one thousand eight hundred and sixty-six, at said Woburn, without then and there having any license, appointment, or authority therefor, first duly had and obtained according to law, did then and there sell to a certain person, whose name is John E. Hennessey, a certain quantity of intoxicating liquor, to wit, one gill of intoxicating liquor, against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, on their oath aforesaid, do further present that Thomas Salmon, of Woburn, in the county of Middlesex aforesaid, on the first day of April, in the year of our Lord one thousand eight hundred and sixty-six, at said Woburn, without then and there having any license, appointment, or authority therefor, first duly had and obtained according to law, did then and there sell to a certain person, whose name is to said jurors unknown, a certain quantity of intoxicating liquor, to wit, one gill of intoxicating liquor,

against the peace of said Commonwealth and contrary to the form of the statute in such case made and provided.

A true bill.

HENRY C. ROLFE,
Foreman of the Grand Jury.

I. S. MORSE,
District Attorney.

9 *Liquor law, No.* 766.

COMMONWEALTH
vs.
THOMAS SALMON.

SUPERIOR COURT, *June T.*, 1866.

6th d. Returned by the grand jury and filed in court.

JNO. JAS. SAWYER,
Ass't Clerk.

1866, July 12.—Df'd't is arraigned and pleads not guilty.

July 13.—1st jury is empannelled, to wit:

Richard Barrett, foreman; James P. Brown, William Brown, Benjamin Bourne, Jeremiah M. Currier, Abraham W. Farbush, Thomas Fiske, Samuel Y. Frost, Samuel B. Gardner, David B. Hadley, Daniel A. Tainter, Joseph W. Tuttle.

July 13.—Verd.: Guilty on 1st count.

Sentence.

To pay a fine of fifty dollars and costs of prosecution, and to stand committed until such fine and costs are paid, and to be imprisoned at hard labor in the house of correction in said county for the term of three months, and to recognize in the sum of one thousand dollars not within one year from the time of conviction upon this indictment to violate any provision of chapter eighty-six of the general statutes or any law of this Commonwealth relating to the sale of spirituous and intoxicating liquors, and to stand committed until he enter into such recognizance. Such imprisonment to take effect after the expiration of his sentence in No. 434.

M. MORTON,
Justice of the Superior Court.

I will no further prosecute the second, third, and fourth counts in this indictment.

I. S. MORSE,
District Attorney.

10 And now the said Thomas Salmon is set to the bar and has this indictment read to him. He says thereof he is not guilty and for trial puts himself upon the country. A jury is therefore empannelled and sworn to try the issue, who, after hearing and under-

standing all matters and things concerning the same, return their verdict, and upon oath say that thereof the said Thomas Salmon is guilty. It is therefore, on this eighteenth day of July, A. D. 1866, considered by the court that said Thomas Salmon (for his offence as set forth in the indictment) be punished, to pay a fine of fifty dollars and costs of prosecution, and to stand committed until such fine and costs are paid; and to be imprisoned at hard labor in the house of correction in said county for the term of three months, and to recognize in the sum of one thousand dollars not within one year from the time of conviction upon this indictment to violate any provision of chapter eighty-six of the general statutes or any law of this Commonwealth relating to the sale of spirituous or intoxicating liquors, and to
11 stand committed until he enter into such recognizance. Such imprisonment to take effect after the expiration of his sentence in No. 434. All which appears of record in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Concord, in said county, this 18th day of July, in the year of our Lord eighteen hundred and sixty-six.

[L. S.] JNO. JAS. SAWYER,
Ass't Clerk.

Filed 14th January, 1867.